REMARKS

This is in response to the final Office Action mailed on October 30, 2008, in which claims 1-19 and 36 were rejected (claims 20-33 and 35 remained withdrawn from consideration as directed to a non-elected invention). Claims 1-19 and 36 were again rejected under 35 U.S.C. 102(e) as being anticipated by Stark et al. (U.S. Application Publication No. 2006/0181678 A1).

With this Amendment, claims 20-33, 35 and 36 are canceled without prejudice, leaving claims 1-19 pending in the application.

In discussing the rejection of the claims based on the Stark et al. publication and the Applicant's previously filed arguments, the Examiner responded to the Applicant's contention that Stark et al. rely on assumed sizes of the pupil and therefore cannot reliably and accurately establish a distance from the pupilometer to the eye by stating that "the claim limitation of the present invention does not limit the use of actual tested determined sized (sic) and therefore does not exclude using assumed sizes. Therefore, the claimed limitations have been met."

With this Amendment, claim 1 is amended to more explicitly recite the step of "establishing the distance between the surface of the eyeball and the image capturing means." As explained in the Applicant's previous Amendment, the Stark et al. publication describes a system that relies on an assumed parameter size to derive a pupil diameter, yielding estimated values of dimensions rather than measured ones (see, e.g., paragraph 0121, explaining that derived pupil size is based on an assumption that the horizontal diameter of the sclera/iris border is a certain size, e.g. 11.7 mm or another selected size between 10 and 12 mm.). As amended, independent claim 1 recites that establishing the distance between the surface of the eyeball and the image capturing means includes detecting the pupil and measuring the size of the detected pupil. This step is not disclosed, taught or suggested by the Stark et al. publication, as Stark et al. do not teach measuring the size of the pupil (pupil size is derived from an estimate). The presently claimed invention is more accurate and reliable in establishing the distance between the surface of the eyeball and the image capturing means by virtue of actually measuring parameters rather than relying on an assumed estimate. Because this element of amended independent claim 1 is not disclosed by the Stark et al. publication, the rejection of claim 1 under 35 U.S.C. 102(e) should be withdrawn.

Claim 2, which depends from amended independent claim 1, further recites that establishing the distance between the surface of the eyeball and the image capturing means includes finding highlights on the surface of the eyeball generated by the illumination means and calculating the distance between said highlights. The Examiner rejected this claim under 35 U.S.C. 102(e) and stated that "Stark et al. discloses ... establishing the distance between the surface of the eyeball (38) and the image capturing means (14, 16, and other related image processing electronics) includes finding highlights on the surface of the eyeball (38) generated by the said illumination means (two blue light LEDs, 28 and 328 and four IR LEDs, 24, 324 and 424) and calculating the distance between said highlights (sections 0079 and 0080)." While this disclosure of the Stark et al. does teach illuminating the eye, there is no disclosure, teaching or suggestion in paragraphs 0079 and 0080 or elsewhere in the Stark et al. publication of finding highlights on the surface of the eyeball and calculating the distance between those highlights. Paragraphs 0079 and 0080 discuss operation of LEDs to illuminate the eye, but are silent as to finding highlights on the eye and calculating distances between highlights. If the Examiner believes that these paragraphs disclose the limitations recited in claim 2, a more specific reference to the Stark et al. publication is needed. Because the elements recited in claim 2 are not disclosed, taught or suggested by the Stark et al. publication, the rejection of claim 2 under 35 U.S.C. 102(e) should be withdrawn.

Claims 3-19 depend from amended independent claim 1, and for at least that reason are allowable therewith.

CONCLUSION

In view of the foregoing, all pending claims 1-19 are in condition for allowance. Because this Amendment cancels claims and places all of the remaining claims in condition for allowance, entry of this Amendment is proper under 37 C.F.R. 1.116. A Notice of Allowance is accordingly respectfully requested.

The Commissioner is authorized to charge any additional fees associated with this paper or credit any overpayment to Deposit Account No. 11-0982.

Respectfully submitted,

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